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10 IN THE DISTRICT COURT OF GUAM

11 KWIKSPACE GUAM, INC.

Cause No. 16-00079

12 Plaintiff,

13 v.

COMPLAINT

14 REACTION CO.

DEMAND FOR JURY TRIAL

15 Defendant.

16 Plaintiff KwikSPACE Guam, Inc. ("KwikSPACE") and as for its complaint
17 against complains of Defendant Reaction Co. ("Reaction") alleges as follows:

18 **NATURE OF LAWSUIT**

19 1. This is a claim for patent infringement arising under the patent laws of the United
20 States, Title 35 of the United States Code.

21 2. This is also a claim for trade dress infringement and dilution, injury to business
22 reputation, unfair competition, and false designation of origin arising under the Trademark
23 Act of 1946, 15 U.S.C. §§ 1051 *et seq.* (2004)(“Lanham Act”).

24 3. Reaction is making, using, offering-for-sale, importing, renting, and/or offering-
25 for-rent various modular structures made from cargo containers which infringe
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COMPLAINT - 1

1 KwikSPACE's various forms of intellectual property, misleading consumers, and are
2 interfering with KwikSPACE's business practices.

3 **THE PARTIES**

4 **4.** Plaintiff KwikSPACE is a Guam Corporation headquartered in Piti, Guam.
5 KwikSPACE is engaged in the business of developing, manufacturing and selling, and
6 renting-out modular, internationally-standardized ("ISO") buildings.

7 **5.** Upon information and belief, Defendant Reaction is a Guam corporation with a
8 principal place of business at Bldg. 17-3311 Corsair Rd. Tiyan Barrigada, Guam 96921.
9 Upon information and belief, Reaction is engaged in the business of making, using,
10 importing, distributing, selling, and offering-for-sale and rental modular ISO buildings.

11 **6.** Upon information and belief, Reaction transacts business and has provided to
12 customers in this judicial district and throughout the territory of Guam modular ISO
13 buildings.

14 **JURISDICTION AND VENUE**

15 **7.** This action arises under the patent laws of the United States, Title 25 of the United
16 States Code. This Court's jurisdiction over this action is proper under the above statute
17 under 35 U.S.C. § 271 *et seq.* and 15 U.S.C. § 1125(a). This Court has supplemental
18 jurisdiction over the related state claims pursuant to 38 U.S.C. § 1367.

19 **8.** Venue is proper under 28 U.S.C. § 1391(b) and (c). Defendant has purposefully
20 availed itself of the privilege of transacting extensive business in the territory of Guam.
21 This Court has exclusive jurisdiction over the subject matter of the Complaint under 28
22 U.S.C. §§ 1338(a) and (b).

23 **9.** Personal Jurisdiction over the Defendant is proper in this Court. Venue in this
24 judicial district is proper under 28 U.S.C. §§ 1391(b), (c) as well as 1400(b).

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BACKGROUND OF THE CONTROVERSY

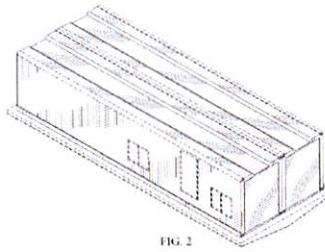
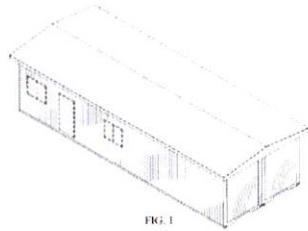
10. KwikSPACE has offered a range of industrial services to customers in Guam and
Micronesia since 1994. Among other services, KwikSPACE makes, sells, and rents-out
modular ISO buildings to be used in a variety of applications.

5 **11.** Recognizing that the Pacific Islands receive a high number of shipping containers
6 and that wind-resistant structures are essential yet costly, KwikSPACE set out to develop
7 a way to convert these containers into affordable, customizable structures. While some
8 customers were satisfied with only using one converted shipping container for certain uses,
9 many others felt the need to have additional space, as well as the need for the structures to
10 withstand harsh conditions.

11 **12.** Recognizing this long-felt need, KwikSPACE's vice president Mr. Peter Gill III and
12 president Mr. Peter Gill ("the Gills") set out to develop a safe and effective means for
13 attaching cargo containers lengthwise and outfitting the resulting "double-wide" structure
14 into a variety of formats. Eventually, the Gills developed a means of fastening the cargo
15 containers that also maintained their structural capacity to withstand most typhoons and
16 earthquakes.

17 13. To protect his inventions and designs, and develop a business, the Gills set out
18 obtain several United States patents.

19 14. KwikSPACE is the owner by assignment of U.S. Design Patent No. D6803047
20 (“the ‘047 patent”), which issued May 21, 2013 and is attached to this Complaint as
21 Exhibit A. Representative Figures 1 and 2 of the ‘047 patent are excerpted and rotated
22 below:



1 **15.** KwikSPACE is the owner by assignment of U.S. Design Patent No. D727531 ("the
2 '531 patent"), which issued on April 21, 2015 and is attached to this Complaint as **Exhibit**
3 **B.** Representative Figures 1 and 2 of the '531 patent is excerpted and rotated below:

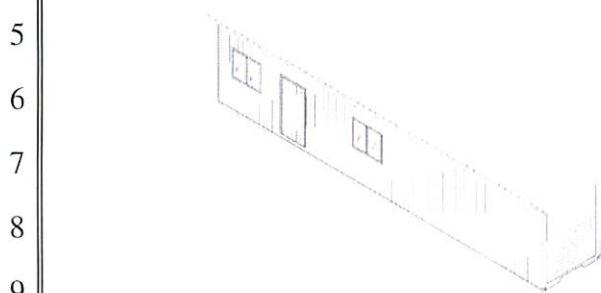


FIG. 1

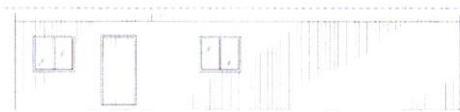
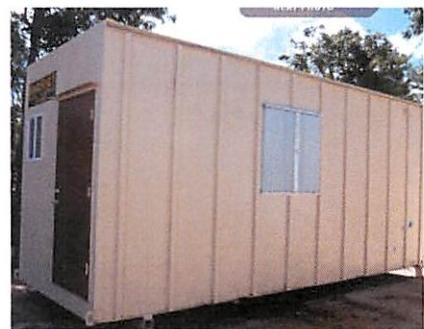
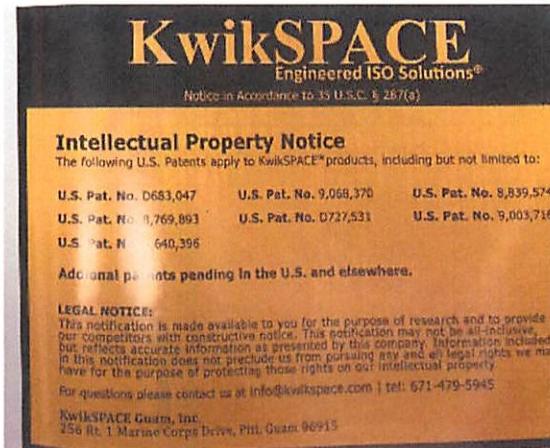


FIG. 2

10 **16.** To further distinguish itself from competitors, since 1995, KwikSPACE has been
11 using a distinctive beige/cream color scheme on all of its wind-rated ISO modular
12 buildings. This unique and non-functional color identifies the origin of KwikSPACE's
13 products to its consumers. Demonstrative photographs of KwikSPACE's distinctive and
14 recognizable color scheme are excerpted below:



21 **17.** At least as early as August 2014, KwikSPACE began to publicly identify its
22 intellectual property protection in news publications such as the *Marianas Variety*
23 *newspaper*, as well as the Guam Contractor's Association's *Construction News Bulletin*.
24 True and accurate copies of these articles are attached to this Complaint as **Exhibit C.** A
25 *demonstrative advertisement from the September 2015 issue of the Bulletin* (Vol. 56, Issue
26 9) is reproduced below:
27



18. At least as early as 2015, Reaction has been making, using, selling, renting-out, offering-for-sale, and distributing in commerce wind-resistant ISO modular buildings bearing a cream color scheme, and exterior design, similar or identical in shade and/or design used by KwikSPACE. Such use of the patented designs and/or cream color scheme on wind-resistant ISO modular building by Reaction is likely to cause confusion as to the source of the wind-resistant ISO modular buildings by falsely suggesting to consumers that wind-resistant ISO modular buildings supplied by Reaction are sourced by KwikSPACE when, in fact, they are not.

19. On or about August 2015, KwikSPACE learned that Reaction had made, sold, offered for sale, rented, offered for rental, and/or used single-wide units ("Accused Single Units") that are substantially similar to the patented design shown in the '531 patent.

20. On or about September 2015, KwikSPACE learned that Reaction had made, sold, offered for sale, rented, offered for rental, and/or used double-wide units ("Accused Double Units") that are substantially similar to the patented design shown in the '047 patent.

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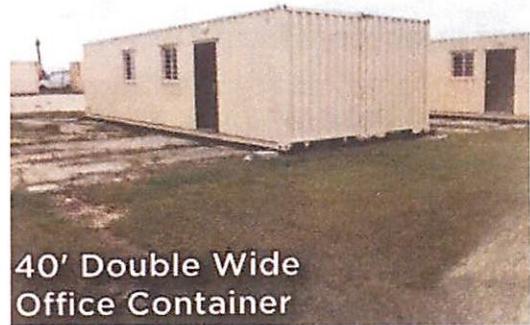
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1 **21.** A demonstrative side-by-side comparison of KwikSPACE's protected trade dress
2 is shown below, with Reaction's imitating trade dress shown on the right:

3 KwikSPACE's Distinctive Trade Dress



3 Reaction's Imitation



10 **22.** A demonstrative chart comparing KwikSPACE's distinctive trade dress with
11 Reaction's infringing trade dress is attached as Exhibit D.

12 **23.** The products made, used, offered, sold, distributed, and/or rented-out by Reaction
13 are not made, sold, or offered by KwikSPACE. Nor is Reaction associated or connected
14 with KwikSPACE or licensed, authorized, sponsored, endorsed or approved by
15 KwikSPACE in any way.

16 **24.** Upon present information and belief, many of the products made, used, offered,
17 sold, distributed, and/or rented-out by Reaction do not have adequate footing to withstand
18 strong typhoon winds, thereby endangering the users of these products and risking millions
19 of dollars in damage.

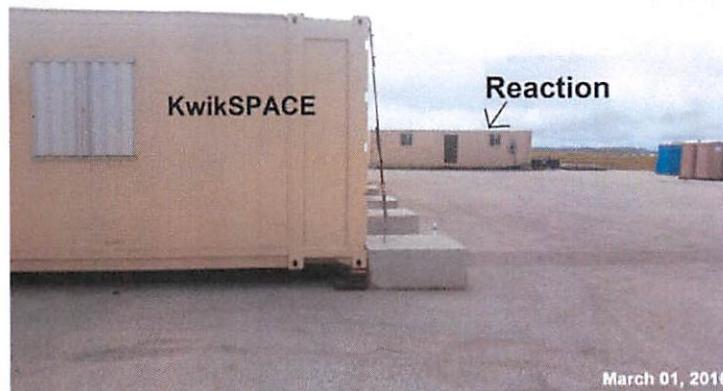
20 **25.** On or about October 6, 2015 Defendant Reaction was notified via certified letter
21 that its double unit and single unit wind resistant modular ISO buildings infringe the '047
22 patent and the '531 patent, respectively. In that letter, KwikSPACE demanded that Reaction
23 cease and desist the use, sale, rental, and manufacture of its wind-resistant modular ISO
24 buildings. A true and accurate copy of that letter is attached to this Complaint as Exhibit
25 E.

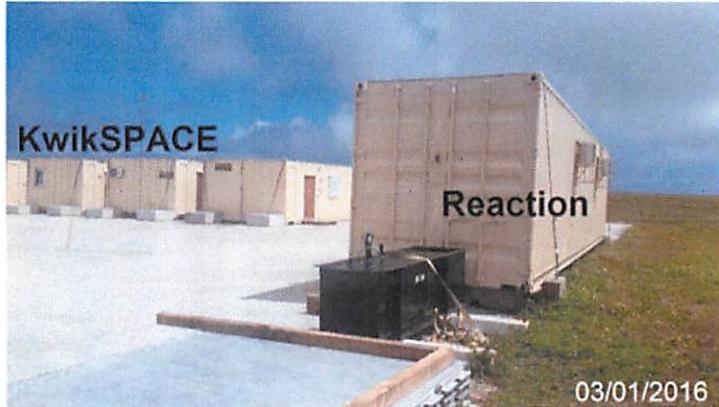
1 **26.** Instances of actual confusion have already occurred and are likely to continue
2 occurring unless use by Reaction of KwikSPACE's distinctive cream color scheme is
3 enjoined by this Court.

4 **27.** On or about December 7, 2015 KwikSPACE received a call from a point of contact
5 at the United States Marine Corps concerning a container unit that had a defective door
6 knob and defective air conditioning unit. Upon prompt inspection, KwikSPACE learned
7 that the unit was not KwikSPACE property and that it most likely belonged to Reaction.
8 A true and accurate redacted copy of KwikSPACE's email correspondence with a
9 representative from the United States Air Force regarding this event is attached as **Exhibit**
10 **F.**

11 **28.** On or about late February 2016, KwikSPACE was notified by an individual
12 working at Hangar 5 at Anderson Air Force Base ("AAFB") that one of the AAFB's cream-
13 colored portable cargo units was leaking fuel from the generator. A KwikSPACE
14 representative arrived at Hangar Five only to discover that the unit in question belonged to
15 Reaction – not KwikSPACE.

16 **29.** On or about March 1, 2016, a KwikSPACE representative photographed the
17 defective units in Hangar 5 in question as shown below:





8 **30.** On or about August or September 2016, KwikSPACE was informed by the Guam
9 Police Department that a confusingly similar, cream-colored portable cargo unit was
10 dangerously close to striking a traffic light during transit. Upon information and belief, this
11 unit actually belonged to, and/or was managed by, Reaction.

12 **31.** As a result of this careless transport by Reaction, KwikSPACE must now arrange
13 for police escort services several days in advance of making any delivery. This has hindered
14 KwikSPACE's ability to efficiently conduct its operations to this day.

15 **32.** On or about September 2, 2016 KwikSPACE again notified Reaction of its
16 infringement of the '047 patent and the '531 patent. In this letter, KwikSPACE also notified
17 Reaction that Reaction was unlawfully using KwikSPACE's protected trade dress. Namely,
18 Reaction was notified that it must cease and desist its use of KwikSPACE's source-
19 identifying cream color scheme, and confusingly similar patented designs, on its modular
20 ISO buildings. A true and accurate copy of this correspondence is attached as **Exhibit G.**

21 **33.** As of the date of this filing, Reaction has not provided any substantive response to
22 either the October 6, 2015 letter or the September 2, 2016 letter.

COUNT I

INFRINGEMENT OF THE '047 PATENT UNDER 35 U.S.C. § 271 *et seq.*

25 **34.** KwikSPACE hereby repeats and incorporates by reference Paragraphs 1-32 above
26 as if fully set forth herein.

1 35. A representative comparison chart demonstrating the substantial similarity
2 between the patented design the '047 patent and Reaction's double-wide unit ("Accused
3 Double Units") is attached as Exhibit H and excerpted below:



9 **36.** Reaction's infringement of the '047 patent has injured and will continue to injure
10 KwikSPACE unless and until the Court enters an injunction prohibiting further
11 infringement and, specifically, enjoining further sale, use or offer for sale of products that
12 are substantially similar to the claimed design of the '047 patent.

13 **37.** Upon information and belief, Reaction's infringement of the '047 patent is believed
14 to be willful in that Reaction was placed on actual notice of the '047 patent at least as early
15 as October 15, 2015 but have taken no action to avoid continued infringement of the '047
16 patent.

COUNT II

INFRINGEMENT OF THE '531 PATENT UNDER 35 U.S.C. § 271 *et seq.*

19 **38.** KwikSPACE hereby repeats and incorporates by reference Paragraphs 1-36 above
20 as if fully set forth herein.

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23 | *II*

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COMPLAINT - 9

1 39. A representative comparison chart demonstrating the substantial similarity
2 between the patented design the '531 patent and Reaction's single-wide unit ("Accused
3 Single Units") is attached as Exhibit I and excerpted below:

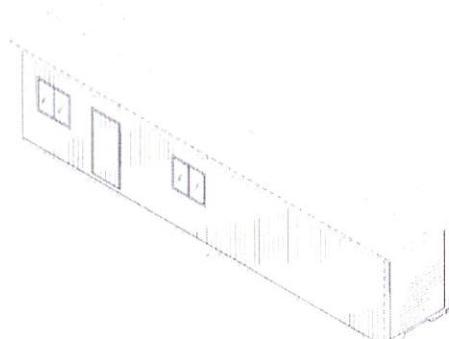
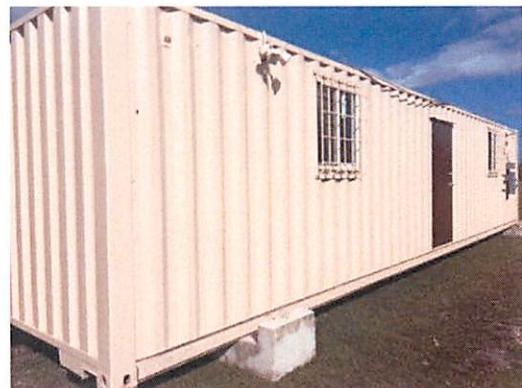


FIG. 1



11 **40.** Reaction's infringement of the '531 patent has injured and will continue to injure
12 KwikSPACE unless and until the Court enters an injunction prohibiting further
13 infringement and, specifically, enjoining further sale, use or offer for sale products that are
14 substantially similar to the claimed design of the '531 patent.

15 **41.** Upon information and belief, Reaction's infringement of the '531 patent is believed
16 to be willful in that Reaction was placed on actual notice of its infringement of '531 patent
17 at least as early as October 15, 2015 but have taken no action to avoid continued
18 infringement of the '531 patent.

COUNT III

False Designation of Origin 15 U.S.C. § 1125(a)

21 **42.** KwikSPACE hereby repeats and incorporates by reference Paragraphs 1-40 above
22 as if fully set forth herein.

23 43. Reaction's use of confusingly similar imitations of KwikSPACE's beige/cream
24 trade dress is likely to deceive, confuse, and mislead prospective purchasers and purchasers
25 into believing that the cargo containers offered by Reaction originate from KwikSPACE,
26 which they do not. This likelihood of confusion, mistake, and deception engendered by
27 Reaction's misappropriation is causing irreparable harm to the goodwill built by

1 KwikSPACE's trade dress and the reputation for quality that such trade dress embodies.
2 This harm is particularly damaging with respect to those persons who perceive a defect
3 or lack of quality in Reaction's products.

4 **44.** Such willful actions on the part of Reaction and/or Reaction are in violation of 15
5 U.S.C. § 1125(a). Unless enjoined by this Court, Reaction's continued use of the cream
6 color scheme adopted and created by KwikSPACE is likely to confuse the consuming
7 public as to the source of KwikSPACE and Reaction's respective products and will result
8 in harm to KwikSPACE.

9 **CLAIMS FOR RELIEF**

10 **45.** WHEREFORE, KwikSPACE asks this Court to enter judgment against Defendant
11 Reaction and against their subsidiaries, affiliates, agents, servants, employees and all
12 persons in active concert or participation with them, granting the following relief:

- 13 **a)** A declaration that Reaction has infringed the patents-in-suit as alleged
14 above.
- 15 **b)** That Reaction and its officers, agents, employees, and all those persons
16 acting or attempting to act in active concert or in participation with them or acting
17 on their behalf be immediately, preliminarily and permanently enjoined from
18 further infringement of the patents-in-suit under 35 U.S.C. § 283;
- 19 **c)** An award of damages adequate to compensate KwikSPACE for the
20 infringement that has occurred, together with prejudgment interest from the date
21 infringement began;
- 22 **d)** An award of its profits under 35 U.S.C. § 289;
- 23 **e)** An award of KwikSPACE's actual damages, including lost profits and/or a
24 reasonable royalty, and increased or enhanced damages as permitted under 35
25 U.S.C. § 284;
- 26 **f)** An award of increased damages as permitted under 35 U.S.C. § 284;

- g) A declaration that this case is exceptional and an award to KwikSPACE of its attorneys' fees and costs as may be appropriate and as provided by 35 U.S.C. § 285;
 - h) That Reaction and its officers, agents, employees, and all those persons acting or attempting to act in active concert or in participation with them or acting on their behalf be immediately, preliminarily and permanently enjoined from further infringement of the patents-in-suit under 15 U.S.C. § 1116;
 - i) An award of Reaction's profits, KwikSPACE's actual damages it has sustained, and the costs of the action under 15 U.S.C. § 1117(a);
 - j) Trebled damages pursuant to 15 U.S.C. § 1117(b);
 - k) An award of interest, including prejudgment interest, on all damages; and
 - l) Such other and further relief as this Court or a jury may deem proper and just.

JURY DEMAND

KwikSPACE demands a trial by jury on all issues presented in this Complaint.

Dated this 8th day of November, 2016.

Respectfully submitted,

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